

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

MICHAEL J BELLEAU,

Plaintiff,

v.

Case No. 12-C-1198

KEVIN C. GREENE,

Defendant.

ORDER

Plaintiff, Michael J. Belleau, proceeding *pro se*, brought this action under 42 U.S.C. § 1983 against Brown County Assistant District Attorney Kevin C. Greene, alleging a violation of his constitutional rights. Belleau previously filed a motion to proceed *in forma pauperis* on November 27, 2012. Reviewing Belleau's affidavit, I concluded that Belleau was not indigent and therefore denied his motion to proceed *in forma pauperis*, directing him to file the required fee if he wished to proceed. (ECF No. 4.) Belleau paid the required \$350 filing fee on December 3, 2012. Belleau also filed, on November 30, 2012, a motion for summary judgment. There is no indication that the defendant has been served with a copy of the summons and complaint, and Belleau's motion for summary judgment is clearly premature. It is therefore denied.

The Federal Rules of Civil Procedure explain that the plaintiff is responsible for having a summons and complaint served on the defendant within 120 days of filing the complaint with the court. Fed. R. Civ. P. 4(c)(1), (m). Service must be made by a person who is at least 18 years old and not a party. Fed. R. Civ. P. 4(c)(2). A plaintiff may request that the court order service be made on the

defendant by the U.S. Marshall's Service. Fed. R. Civ. P. 4(c)(3). Belleau is advised that Congress requires the U.S. Marshals Service to charge for making or attempting such service. 28 U.S.C. § 1921(b). The current fee for waiver-of-service packages is \$8 per item. The full fee schedule is provided in Revision to United States Marshals Service Fees for Services. 28 C.F.R. §§ 0.114(a)(2), (a)(3). Belleau is directed to have the summons and complaint served on defendant if he wishes to proceed with his case. Failure to do so within 120 days of filing of his complaint could result in dismissal of failure to prosecute. Fed. R. Civ. P. 4(m).

THEREFORE, IT IS ORDERED that Belleau's motion for summary judgment is **denied** as premature.

IT IS FURTHER DIRECTED that Belleau have a summons and complaint served on the defendant within the time allotted. If Belleau fails to have the defendant properly served, he will risk dismissal of his case without prejudice. Fed. R. Civ. P. 4(m).

Dated this 9th day of January, 2013.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court